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May 8, 2009
HSE052-002, File No. 6.3.3.7.2

David Palazzi
Department of Natural Resources
PO Box 47001
Olympia, WA 98504-7001

Transmitted via email address: david.palazzi@dnr.wa.gov

**RE: ConocoPhillips Ferndale Refinery Comments on
April 1, 2009 Draft Management Plan for Cherry Point**

Dear Mr. Palazzi:

ConocoPhillips appreciates this initial opportunity to comment on DNR's April 1 draft of the Management Plan for the Cherry Point reach. In David Robert's cover email for the Management Plan he indicated that DNR wishes only to receive technical and scientific comments on the Plan at this time, and that broader comments on the Plan will not be considered until a later public process.

In keeping with Mr. Roberts' request, this letter conveys ConocoPhillips' technical comments on the Plan. However, as stated in prior correspondence to DNR, ConocoPhillips opposes the designation of Cherry Point as an aquatic reserve and considers the April 1 draft of the Management Plan a significant step backwards in the years-long process that DNR, ConocoPhillips and other stakeholders have been engaged in to find an appropriate management framework for Cherry Point. Among other things, the current draft of the Plan continues to mischaracterize the history and dynamic of the Workgroup process. The Plan contains statements erroneously implying that the Cherry Point Workgroup developed the draft Management Plan and/or concurs with Plan goals and objectives, conclusions, or strategies/action items. The Workgroup was formed at DNR's invitation with the original intent of evaluating an alternative to the reserve designation for Cherry Point – it was not formed to develop a management plan. It should be made clear that a party's involvement in the Workgroup does not imply agreement with the Management Plan.

Numerous statements remain in the current Plan which are speculative in nature, unsubstantiated by valid data, or are unrelated to the Cherry Point reach. As stated previously, the Management Plan must be

based upon existing, well-supported scientific data and information pertinent to the Cherry Point management area, and further developing such data and information to delineate the baseline conditions at Cherry Point.

The current Plan carries forward most of the concepts in DNR's December 2008 Cherry Point Framework document, including the creation of a "resource area" that expands the Plan's coverage to large areas of the Cherry Point uplands over which DNR has no regulatory authority, and the formation of a "resource managers group" of public agencies and Tribes to implement the Plan. As explained in my January 23, 2009 letter to David Roberts, ConocoPhillips is opposed to the concepts contained in the December 2008 framework, and is consequently opposed to those same concepts as carried forward into the current draft of the Management Plan.

ConocoPhillips will submit detailed comments on the Management Plan during the upcoming public process. For now, as requested by Mr. Roberts, I offer the following technical and scientific comments (quotes from the Plan appear in italics, ConocoPhillips' comments appear in bold):

- Page 12, 4th line: *"The planning process was put on hold temporarily in 2004 while DNR attempted to address some differences of opinion within the community regarding the future and direction of the Cherry Point Reserve."* **The process was actually put on hold by DNR in an effort to revise the language of WAC 332-30-151 via public review and comment.**
- Page 31, last paragraph: **Paragraph "d" of WCC.23.100.17.A.1 has been omitted from this excerpt of section A.1. – it needs to be included in the description.**
- Page 87, 12th line: *"As a result, it is likely that one of the greatest threats to herring within the boundaries of the management area is from damage to eelgrass spawning and rearing habitat."* **There is no citation for this statement. This alleged threat was not previously identified during Workgroup discussions – this statement should be substantiated by appropriate citation.**
- Page 110, the last three bullet items on the incident list (*January 18, 2005; February 14, 2005; and June 9, 2009*): **these bullet items describe incidents for which ConocoPhillips was not the responsible party, however initial spill response (containment and/or recovery) to the incidents was provided by ConocoPhillips response personnel or its pre-booming contractor.**
- Page 112, 3rd line: *"Un-exchanged ballast water discharges from commercial ships, such as those calling at the Cherry point terminals, are a primary vector for introducing non-indigenous species."* **This statement is misleading, suggesting that the ships calling on Cherry Point terminals discharge un-exchanged ballast water. Cargo ships delivering crude oil to the ConocoPhillips terminal do not discharge ballast water at Cherry Point (Jeff Shaw, Polar Tankers. 2009. Personal Communication).**

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- Page 127, third bullet item of 7.1 Protection: *"Cable or pipeline installations should not be allowed unless horizontally drilled beneath the Cherry Point Resource Area."* **This statement needs to be modified to clarify that cable or pipeline installations should be horizontally drilled if within state-owned aquatic lands.**
- Page 127, fourth bullet item of 7.1 Protection: *"Regulatory agencies should required (sic) best available technology in permits for all new structures to prevent harm to key habitats and species."* **Regulatory agencies do not require specific technologies. This statement should be modified to read: "Permit applicants shall consider best available technology, as supported by economic benefit analysis, for new projects in order to minimize disturbance of key habitats and species."**
- Page 135, first bullet: *"Fuel/oil transfer interruptions due to weather conditions."* **This data is not reported to state or federal agencies, and therefore, can not be collected and tabulated quarterly.**
- Page 178: *"Ferndale Refinery operated by ConocoPhillips: DNR lease 20-A11714 – Lease pertaining to ConocoPhillips/Tosco pier and outfalls."* **The current DNR-ConocoPhillips Ferndale Refinery lease (issued in 2006) is assigned Lease No. 20-B11714.**

Thank you again for the opportunity to comment on the draft Management Plan. If you have any questions about the technical and scientific comments in this letter, please contact Tim Johnson at (360) 384-8368.

Sincerely,

A handwritten signature in blue ink that reads "Marjorie Hatter". The signature is fluid and cursive, with the first name "Marjorie" being more prominent than the last name "Hatter".

Marjorie Hatter

TDJ; kjh